Supreme Court, U.S.
FILED
DEC 28 1992
OFFICE OF THE CLERK

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No. 92-929

In the
Supreme Court of the United States
October Term, 1992

METROPOLITAN SCHOOL DISTRICT OF WAYNE TOWNSHIP, MARION COUNTY, INDIANA, on behalf of itself, and all others similarly situated,

Petitioner,

v.

ROBERT R. DAVILA, Assistant Secretary, Office of Special Education and Rehabilitative Services, United States Department of Education,

Respondent,

ON PETITION FOR WRIT OF CERTIORIARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF AMICUS CURIAE OF THE NEW YORK STATE SCHOOL BOARDS ASSOCIATION IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTEREST OF THE AMICUS

This brief is filed with consent of both parties. Letters of consent are on file with the Clerk of this Court.

Amicus Curiae, New York State School Boards Association (NYSSBA), is a not-

for-profit corporate instrumentality of the public school districts of the State of New York, and represents approximately seven hundred forty (740) or ninety-four percent (94%) of such public school districts who are members of this Association. Pursuant to section 1618 of the Education Law of the State of New York, NYSSBA has the responsibility of devising practical ways and means of attaining greater economy and efficiency in the administration of public school district affairs and projects.

Unlike public school districts in Indiana, New York public schools are already required by the State's Education Law to provide alternative educational services to <u>all</u> students suspended from school for disciplinary reasons. This statutory obligation predates the New

Letter at issue in the present case. Therefore, the New Letter bears no new responsibilities or fiscal implications for public school districts in New York State.

Accordingly, NYSSBA's interest in the present case concerns itself with the implications raised by respondent's position.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ of certioriari because aside from the procedural issues raised by petitioner, the New Letter promulgated by respondent, and challenged herein, constitutes an unwarranted and untenable expansion of this Court's ruling in Honig v. Doe, 484 U.S. 305 (1988).

Respondent's New Letter expands Honig to afford children with

disabilities who engage in disruptive conduct unrelated to their disability all of the protections available under the Individuals with Disabilities Education Act (IDEA), including the implementation of "stay put" provisions which were applied by this Court in Honig, to require that disabled students who are suspended for a period beyond ten days for misconduct arising out of their disability not have the placement set forth in their individualized educational program (IEP) changed unilaterally by the school district.

Such an expansion of Honig additionally communicates to children with disabilities the message that their condition places them above the law and excuses them from taking responsibility for their actions.

Amicus respectfully requests that this Court address this issue and clearly set forth that its pronouncements in Honig were never intended to communicate such a message, and that the New Letter constitutes an invalid expansion of the Court's ruling in said case.

ARGUMENT

Relying on Honig v. Doe, 484 U.S. 305 (1988) and other cases, respondent, in the New Letter, concluded that Part B of the Education of the Handicapped Act, now the Individual with Disabilities Education Act (IDEA), requires that students with disabilities be provided with educational services during periods of long-term suspension even where the misbehavior warranting such disciplinary action is not a manifestation of a student's disability.

In Honig, however, this Court reviewed the legality of unilateral long-term suspensions of students with disabilities, for a period beyond 10 days, from their regular public school assignments, for disciplinary problems arising out of conduct related to their disability. Honig did not address the issue of long-term suspension of students with disabilities when the misconduct does not arise out of, and is unrelated to, a student's disability. Therefore, respondent's letter implicitly extends the Honig ruling into this latter context by dismissing any distinction between misconduct arising out of a student's disability and misconduct which does not.

Amicus respectfully submits that this Court's ruling in Honig should not be extended as a blanket prohibition of

all long-term suspensions of students with disabilities unilaterally imposed by school districts.

In Honig, this Court determined that the unilateral long-term suspension of students with disabilities for misbehavior which is a manifestation of a student's disability is unlawful because it effects an unauthorized change in placement under IDEA. Any such suspension requires a review of the student's IEP and the retention of the student in his/her "current educational placement" pending all appeals, unless the student's parents agree to an interim placement, or other appropriate relief is granted by the courts.

The question then arises as to whether this "stay put" requirement also applies in situations where a student's

misbehavior is unrelated to his/her disability, as the New Letter appears to imply. The effect of an affirmative answer is to create a class of students who because of their unique circumstances are placed above the law and not required to suffer the consequences of their actions.

According to the New Letter, all disabled students who are subject to long-term suspension are entitled, as of right, to educational services for the duration of any such period. Because respondent dismisses any distinction between misconduct which arises out of a student's disability, and misconduct which does not, it follows that the long-term suspension of students with disabilities for conduct which is not a manifestation of their disability is

subject to the stay put provisions set forth in Honig as applicable to suspensions for misconduct arising out of a student's disability. Consequently, disabled students who are subjected to long-term suspensions for misconduct unrelated to their disability must remain in their individual "current educational placement".

The New Letter fails to consider local statutory and regulatory provisions which require the provision of alternative educational services to suspended students. In New York, for example, Education Law §3214 requires that all students suspended from classroom instruction be provided with alternative educational services from day one, irrespective of the length of their suspension. The statute makes no

distinction between students with disabilities and students without disabilites. But the New Letter, and its expansion of Honig, may invalidate, as a matter of law, the provision of such alternative services by requiring the implementation of IDEA's "stay put" provisions for long-term suspensions even where the misconduct necessitating such disciplinary action is unrelated to the student's disability.

To follow the logic of respondent's position and its expansion of Honig, a school district would not be able to unilaterally impose a long-term suspension on a student who, for example, is hearing impaired and violates the district's policy on substance abuse, even though alternative educational services are provided to such a student

pursuant to state statute, and even though students without disabilities engaging in the same type of conduct would be subjected to such disciplinary action. Amicus respectfully submits that such an outcome is detrimental to the integrity of this nation's system of public education.

Unlike the State of Indiana and others, New York is not placed by the New Letter in a position of having to expend additional funds to provide educational services to suspended disabled students as, pursuant to state law, it must provide such services. Amicus, as the representative of ninety-four percent (94%) of the public school districts of New York State, is nonetheless concerned about the implications of the New Letter as an expansion of Honig, as well as its

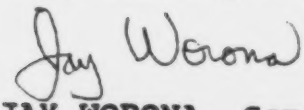
impact on the educational public policy of this nation.

Public policy and law dictates that children with disabilities be afforded a free appropriate education. However, such a right does not entitle disabled students to services above the law. If students engage in conduct which is unrelated to their disability, they should understand and be made to suffer the consequences of their actions.

CONCLUSION

For the above stated reasons, Amicus respectfully requests that this Court grant the petitioner for writ of certiorari, and address the various issues raised so as to provide school districts throughout the nation with much needed answers.

Respectfully submitted,



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